

erroneous view of the subject, as there can be no doubt, I think, upon the authority of the case *Newton vs. Griffith*, 1 H. & G., 111, that Josias Slade, the devisee, took an estate in fee in the land devised to him, and that upon his dying intestate, if he did so die, it descended to his heirs-at-law, who (he dying without issue) are his brothers and sisters, and the children of such brothers and sisters as are dead. *Porter vs. Askew*, 11 G. & J., 347.

The bill alleges that the land so devised by Abraham to Josias Slade will not admit of advantageous partition among those entitled thereto, and that it will be for the interest and advantage of all the parties concerned, and having an interest therein, to sell it, that the proceeds may be divided: thus making a case within the provisions of the twelfth section of the Act of 1785, ch. 72, which authorizes the Court to direct a sale of lands and tenements, in which an infant, idiot, or person *non compos mentis* has a joint interest, or interest in common, with any person or persons, upon its appearing that it will be for the interest and advantage of all the parties to make the sale.

But, as has been shown, Josias Slade, the devisee of Abraham, took an estate in fee in the land under his (Abraham's) will, and upon the death of Josias it descended to his heirs-at-law, who are his brothers and sisters, and the children of such brothers and sisters as are dead, and, consequently, the case is precisely like that of *Chaney and Wife vs. Tipton*, 11 G. & J., 253, in which it was held that the proceeding must conform to the Act regulating descents, in order that the rights of election and preference secured to certain of the heirs by the statutes may be enjoyed.

It does not follow, however, that because the bill is defective, in not making the averments required by the statute, and in the omission to ask for a commission, that it is to be dismissed because these defects may be cured by amendment, as was permitted in the case of *Chaney vs. Tipton*.

[The Chancellor then passed a decree ruling the demurrer good, but retaining the bill, with leave to the complainants to